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EXAMINER

KAUFMAN, JOSEPH A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/055,658
Filing Date: January 23, 2002
Appellant(s): NEHREN ET AL.

MAILED

JUN 27 2005

Group 3700

William Gerstenzang
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 3, 2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

Claims 1-6 are the only claims in the application. Claims 1-6 stand rejected.

This appeal involves claims 1-6.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds For Rejection to Be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. in view of DE 38 73 178 to Morel (U.S. 4,898,293 is an equivalent as acknowledged by applicant; the examiner concurs).

King et al. shows a hose bag 52; cap-like mating part 35; outlet opening 41; cutting device 42; nozzle 60 and the device is "locked" when the nozzle threads are as far in as they can go. King et al. lacks the double-edged, helix-shaped cutting blade. Morel shows a double edged, helix-shaped cutting blade 10 as best seen in Figures 1-3, the blade cutting open a membrane to permit access to the contents inside the container. It would have been obvious to one of ordinary skill in the art to substitute the double-edged, helix-shaped cutting blade of Morel for the single-bladed helix of King et al. as the cutting blade of Morel would require a smaller rotation of the cutting device in order to open the bag, thus saving time and requiring less effort.

(10) Response to Argument

Appellant contends that appellant's device does not require a container or ears. Also, appellant contends that the pouch of King et al. is not a hose bag. First, as there is no exclusionary transitional phrase, i.e. consisting of, additional structures are permitted in the reference. Further, it is unclear how the pouch of King et al. is not a "hose bag" as it has a long dimension like a hose and is a bag. There is no definition of

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a hose bag present in the specification that would preclude the pouch of King et al. from meeting the claim limitation.

Further, appellant contends that King et al. does not show a cap like mating part fixed on one end of the hose bag or a double-edged, helix shaped cutting blade. As the cap 35 captures part of the bag (the ears) and fixes the bag to the cap, the claimed limitation is clearly met. The examiner has conceded that King et al. does not show the double-edged, helix shaped cutting blade, and that is why the Morel reference has been combined with King et al.

Appellant contends that it is unclear what part of King et al. would be replaced by the blade of Morel. If one removes the cutting blade of King et al. and looks at the device of Morel, Morel clearly shows placing the blade over the opening in the dispensing nozzle. This would also be commensurate with the device of the present invention.

Appellant states that if the combination of King et al. and Morel were made, that the King et al. device would function differently. Specifically, the cut portion of the pouch would not be drawn into the same space if Morel were used to modify King et al. Using appellant's reasoning, any combination that changed the function of the device is improper; therefore, no obviousness rejection would be reasonable as modifications clearly change some function of the device. Thankfully, the requirement for modification requires reasonable motivation to make the combination and not a test for a change in functionality. Proper motivation has been provided in the above rejection. Further, Morel states in the U.S. equivalent cited by applicant (Patent No. 4,898,293) that the

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blade and associated structure "prevents membrane scraps from falling into the container..." (column 1, lines 35-38). Therefore, the intent of King et al. is also met by the structure of Morel. Finally, it should be noted that the claims do not require that the cut portion of the pouch be drawn into the space between in the bore and nozzle.

Finally, appellant contends that Morel's blade does not have a pointed tip like the device of King et al. and that there would be no motivation to combine the references. Appellant contends that the inventive concept of King would be destroyed if modified by Morel. First, it should be noted that the claims do not require a pointed tip. Second, the portions to be substituted have been discussed above in previous paragraphs. Third, proper motivation has been provided for making the substitution as noted in the above rejection. Finally, the broad concept of King et al. for not allowing the cut portion of the bag to be released into the bag has been addressed as well by Morel as noted above, and the combination clearly would enhance the overall concept of King et al.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Joseph A. Kaufman
Primary Examiner

Conferees:

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